

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE, YANKTON
SIOUX TRIBE; ROBERT FLYING HAWK;
OGLALA SIOUX TRIBE,

Plaintiffs,

and

CHEYENNE RIVER SIOUX TRIBE; SARA
JUMPING EAGLE ET AL.,

Plaintiff-Intervenors,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant-Cross Defendant,

and

DAKOTA ACCESS, LLC,

Defendant-Intervenor-Cross
Claimant.

Case No. 1:16-cv-1534-JEB
(and Consolidated Case Nos. 16-cv-
1796 and 17-cv-267)

**DEFENDANTS' JOINT RESPONSE
TO PLAINTIFFS' MOTIONS FOR
LEAVE TO FILE SUPPLEMENTAL
COMPLAINTS (D.E. 371, 377, 378 &
379)**

Plaintiffs Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, Oglala Sioux Tribe and Yankton Sioux Tribe have each filed motions seeking leave to supplement their operative complaints (the "Motions"). D.E. 371, 377, 378 & 379. The Court ordered responses or non-oppositions to the Motions by December 21, 2018. Dec. 12, 2018 Minute Order. At the December 12, 2018 status conference, Defendant-Intervenor Dakota Access, LLC suggested a way to resolve the Motions that would minimize litigation: Defendants would not oppose filing of the proposed supplemental complaints, with the understanding that if Plaintiffs raise issues in the summary judgment briefing that exceed the scope of the remand, then Defendants would be able to oppose at that time. Dec. 12, 2018 Status Conf., Hr'g Tr. 10:8-22. The Court stated it was open to that approach if the parties agree. *Id.* at 10:23-24.

The parties have conferred and reached agreement on the proposed approach. They agree that Plaintiffs' pending Motions should be granted without prejudice to the ability of Defendant and Defendant-Intervenor to argue later that the supplementation of a complaint exceeded the scope of Federal Rule of Civil Procedure 15(d) or the topics in this Court's remand order (D.E. 238 & 239). Plaintiffs would be free to refute such an argument. A proposed order is attached.

Dated: December 21, 2018

DAKOTA ACCESS, LLC,
Defendant-Intervenor

/s/ William S. Scherman

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Respectfully submitted,

UNITED STATES ARMY CORPS OF
ENGINEERS, *Defendant*

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2018, I electronically filed the foregoing document using the CM/ECF system. Service was accomplished by the CM/ECF system.

/s/ William S. Scherman

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**[PROPOSED] ORDER
GRANTING PLAINTIFFS'
MOTIONS FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINTS**

Upon agreement of the parties, Plaintiffs' pending motions for leave to supplement their complaints, D.E. 371, 377, 378, & 379, are hereby granted without prejudice to the ability of Defendant and Defendant-Intervenor to argue later, or the ability of Plaintiffs to refute, that the supplementation of a complaint exceeded the scope of Federal Rule of Civil Procedure 15(d) or the topics in this Court's remand order (D.E. 238 & 239).

SO ORDERED this ___ day of ____, 2018.

The Honorable James E. Boasberg
United States District Judge